

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 17856 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE M.R.SHAH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

SHAKRABHAI GHAMIRBHAI SOLANKI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 17856 of 2003
MS TRUSHA K PATEL for Petitioner.
Mr. K.P. Raval, AGP for Respondents.
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CORAM : HON'BLE MR.JUSTICE M.R.SHAH

Date of decision: 22/06/2004

ORAL JUDGEMENT

Rule. Mr. K.P. Raval, learned AGP appearing on behalf of the respondents waives service of Rule. With the consent of both the parties and considering the facts and circumstances of the case, the matter is taken up for final hearing today.

2. The petitioner had purchased the land in question

by registered Sale Deed dated 10th January 1966. Necessary entry to that effect was also made in the record of rights. Thereafter after a period of more than 35 years the transaction in question was taken in suo motu review by the Pranth Officer, Mehsana, and a show cause notice was issued on 25.6.2001 directing the petitioner to show cause why the land should not be confiscated for breach of Section 4(1) and 4(2) of the Bombay Merged Territories (Baroda Watan Abolition) Act, 1953 and there is a breach of condition of grant. The Pranth Officer, Mehsana by his order dated 7th June 2002 passed an order to confiscate the land in question and directing to enter the name of State in the Record of Rights. Being aggrieved and dissatisfied with the order passed by the Pranth Officer, Mehsana dated 7th June 2002, the petitioner preferred revision application before the Collector, Mehsana and the Collector, Mehsana dismissed the said revision application confirming the order passed by the Pranth Officer, Mehsana dated 7.6.2002. Being aggrieved and dissatisfied with the order passed by the Collector, Mehsana dated 31st May 2003 in Revision Application No. 13 of 2002 in dismissing the same and confirming the order passed by the Pranth Officer, Mehsana, the petitioner had preferred revision application before the State Government, i.e., learned Special Secretary (Appeals), Ahmedabad, being Revision Application No. 14 of 2003. In the said revision application, the petitioner also moved an application for interim relief for staying the implementation and operation of the order passed by the Pranth Officer, Mehsana as well as the order passed by the Collector, Mehsana. The learned Special Secretary (Appeals) by his order dated 8.7.2003 has rejected the application of the petitioner for stay. Being aggrieved and dissatisfied with the said order dated 8.7.2003 in refusing to grant interim relief during the pendency of revision application the present Special Civil Application is filed under Article 226/227 of the Constitution of India.

3. Ms. Trusha K. Patel, learned advocate appearing on behalf of the petitioner has submitted that in view of the fact that the order passed by the original-authority in exercising the suo motu power was after a long period of almost 35 years. The learned Special Secretary (Appeals) ought to have considered the same and ought to have granted stay during the pendency of the revision application. She has submitted that at the time of hearing of the stay application the petitioner had pointed out many judgments of this Court wherein it is held that the suo motu powers are required to be

exercised by the authority within a reasonable period. She has further submitted that if during the pendency of the revision application before the revisional authority interim relief as prayed for is not granted and if the order passed by the Pranth Officer, Mehsana and the Collector, Mehsana are not stayed then the revision application would become infructuous.

4. Considering the fact that the exercise of suo motu power by the Pranth Officer, Mehsana was after a period of almost 35 years from the date of transaction, i.e., on 10th January 1966 and that the notice for the first time was issued by the Pranth Officer, Mehsana on 25th June 2001 and considering the judgment of this Court to the effect that even the suo motu powers even in a case where the order is a nullity then also the same is required to be exercised within a reasonable time and transaction in question is required to be quashed and set aside within a reasonable time. Keeping in view such legal position the revisional authority ought to have granted stay of further implementation and operation of the order passed by the Pranth Officer, Mehsana which is impugned before him. If the impugned order passed by the Pranth Officer, Mehsana is not stayed, then the revision application which is preferred by the petitioner would become infructuous. Considering the aforesaid facts and circumstances of the case and considering the fact that the revision application is pending before the State Government, i.e. the Special Secretary (Appeals), the order passed by the revisional authority, i.e. the learned Special Secretary (Appeals), Revenue Department, State of Gujarat, Ahmedabad dated 8.7.2003 in rejecting the application for stay during the pendency and final disposal of the Revision Application No. 14 of 2003 is not sustainable at law and the same is required to be quashed and set aside. During the pendency and final disposal of Revision Application No. 14 of 2003 before the Special Secretary (Appeals), Revenue Department, State of Gujarat, Ahmedabad, the order passed by the Pranth Officer, Mehsana dated 7th June, 2002 in Case No. 2 of 2001 and also the order dated 31st May 2003 passed by the Collector, Mehsana in Revision Application No. 13 of 2002 are stayed. It will be open for the revisional authority to decide and dispose of the said revision application as early as possible. The Special Civil Application is allowed. Rule is made absolute accordingly with no order as to costs.

[M.R. Shah, J.]

rmr.

